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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/788,524	02/26/2004	Joshua Charles Harrison		6879
7590	09/28/2004		EXAMINER	
Joshua Charles Harrison PO Box 2334 Newport Beach, CA 92659			BOTTORFF, CHRISTOPHER	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 09/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/788,524	HARRISON, JOSHUA CHARLES <i>[Signature]</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Christopher Bottorff	3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 26 February 2004.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 February 2004 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over allowed claims 1-4, 6-9, 20, 21, 23, 24, and 26 of copending Application No. 10/076,552. An obvious-type double patenting rejection is appropriate where the conflicting claims are not identical, but an examined application claim is not patentably distinct from the reference claims because the examined claim is either anticipated by, or would have been obvious over, the reference claims. See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985).

Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 are generic to the device of allowed claims 1-4, 6-

9, 20, 21, 23, 24, and 26 of Application No. 10/076,552. Specifically, claim 1 is generic to allowed claim 2, claim 2 is generic to allowed claim 3, claim 3 is generic to allowed claim 4, claim 4 is generic to allowed claim 6, claim 5 is generic to allowed claim 7, claim 6 is generic to allowed claim 20. Also, claim 7 is generic to allowed claims 1 and 21, claim 8 is generic to allowed claim 2, claim 9 is generic to allowed claim 9, claim 10 is generic to allowed claim 21, claim 11 is generic to allowed claims 7 and 23, claim 12 is generic to allowed claim 26, claim 13 is generic to allowed claims 8 and 24, claim 14 is generic to allowed claim 4, claim 15 is generic to allowed claim 3, and claim 16 is generic to allowed claim 20.

After the filing of this divisional application, an amendment was filed in parent application 10/076,552. Based on that amendment, the claims of the parent application were allowed, including claims 2-4 and 20 that were previously withdrawn as being directed toward a non-elected invention. As a result, allowed claim 2 of parent application 10/076,552 falls entirely within the scope of claim 1 of this divisional application. In particular, claim 1 of this divisional application is identical to allowed claim 2 except that allowed claim 2 adds the limitation "said plurality of firm features including all such firm features on the platform retention assembly that contact firm mating features of the binding support platform." The scope of protection sought through claim 1 of this divisional application is broader than the protection already obtained through allowed claim 2, and thereby pending claim 1 is anticipated by allowed claim 2. Similarly, claims 2-6 of this divisional application are anticipated by claims 3, 4, 6, 7, and 20 of the parent application.

Claim 7 of this divisional application differs from allowed claims 1 and 21 of the parent application in that claim 7 defines the preload compliant members on the binding support platform and the contours and firm features on the platform retention plate, while claims 1 and 21 define the preload compliant members on the platform retention assembly and the contours and firm features on the binding support platform. The location of these components as defined in claim 7 relates to the species disclosed in relation to Figures 17-19, and the location of these components as defined in claims 1 and 21 relates to the species disclosed in relation to Figures 5-8. In the response to the restriction filed September 8, 2003, Applicant expressly admitted that the species of Figures 17-19 is an obvious variant of the species of Figures 5-8, so that the invention of claim 10 of the parent application is an obvious variant of the invention of claim 1 of the parent application. Therefore, the species of Figures 17-19 is not separately patentable from the species of Figures 5-8, and the rearrangement of the preload compliant members, contours, and firm features in accordance with these two species is not patentably distinguishing.

As a result, allowed claims 1 and 21 of parent application 10/076,552 fall entirely within the scope of claim 7 of this divisional application. In particular, claim 7 of this divisional application is identical to allowed claim 1 except that allowed claim 1 adds the limitation "said plurality of firm features including all such firm features on the platform retention assembly that contact firm mating features of the binding support platform" and defines the obvious rearrangement of parts discussed above. Also, claim 7 of this divisional application is identical to allowed claim 21 except that allowed claim 21 adds

the limitation "wherein the preload compliant members of said platform retention assembly are located in two peripheral regions, one peripheral region located closer to the leading edge of the snowboard than either of the bindings, and the other peripheral region located closer to the trailing edge of the snowboard than either of the bindings" and defines the obvious rearrangement of parts discussed above. The scope of protection sought through claim 7 of this divisional application is broader than the protection already obtained through allowed claims 1 and 21, and pending claim 7 is obvious over allowed claims 1 and 21. Similarly, claims 8-16 of this divisional application are obvious over claims 2-4, 7-9, 20, 21, 23, 24, and 26 of the parent application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Bottorff whose telephone number is (703) 308-2183. The examiner can normally be reached on Mon.-Fri. 7:30 a.m. - 4:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Christopher Bottorff

  
CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600